UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 2 1 2007

OFFICE OF
WATER

Margaret C. Janes
Appalachian Center for the Economy and the Environment
P.O. Box 507
Lewisburg, WV 24901

Dear Ms. Janes:

Thank you for the letter of March 2, 2005, transmitting your petition regarding West Virginia's mercury and methylmercury water quality criteria on behalf of Ohio Valley Environmental Coalition and West Virginia Highlands Conservancy. I regret the delay in providing this reply to your petition. EPA carefully considered each of your specific requests and has prepared a response addressing the issues raised in your petition. Our decisions have been guided by EPA's commitment to the protection of national water quality from mercury contamination. A detailed response to your petition is enclosed.

The petition requests that EPA "review and revise the West Virginia mercury water quality criteria for the protection of human health and aquatic life" under its discretionary Clean Water Act (CWA) section 303(c)(4)(B) authority. In making this request, petitioners specifically point to two aspects of the current West Virginia water quality standards they assert do not meet the federal CWA requirements: (1) West Virginia's methylmercury fish tissue criterion and (2) West Virginia's mercury criteria for human and aquatic health. EPA examined the information presented by petitioners in support of their assertion that West Virginia's mercury water quality criteria are not protective of water quality to evaluate whether that information demonstrates that the relevant requirements of the CWA and implementing federal regulations are not being met. EPA also evaluated policy and resource considerations to determine whether the exercise of agency discretion under CWA section 303(c)(4)(B) is appropriate.

EPA agrees with the petitioners that methylmercury is a highly toxic substance with a number of adverse health effects associated with its exposure to humans and animals. However, based upon its evaluation of the information presented by petitioners as well as information on West Virginia's mercury program and water quality standards, EPA has concluded that petitioners have not demonstrated that the West Virginia mercury and methylmercury criteria are inconsistent with the CWA or EPA regulations. Accordingly, EPA is denying the petition. EPA is currently engaged in substantial efforts aimed at assisting states in adopting and implementing methylmercury human health criteria as well as reducing mercury releases into the environment and human exposures

to mercury. EPA believes that focusing on these national efforts represents the wisest and most efficient use of the Agency's resources and is an effective way of promoting EPA's mercury reduction programs and policies.

We understand Ohio Valley Environmental Coalition and West Virginia Highlands Conservancy's concern with regard to the potential effects from mercury contamination. To that end, I want to re-emphasize EPA's ongoing commitment to the protection of all waters from the contamination of mercury and methylmercury. I want to assure you that EPA carefully considered the information presented in the petition in our decision-making process, which is described in greater detail in the enclosed response and reflects the concurrence of the EPA Region III Administrator. If you would like to discuss this response or your concerns further, please contact me (202-564-5700) or Mr. Jon Capacasa, Director of the Region III Water Protection Division, at 215-814-5422.

Sincerely,

Benjamin H. Grumbles
Assistant Administrator

Enclosure

Cc: Jon Capacasa, EPA Region 3
Scott Mandirola, WVDEP

Enclosure

Summary

EPA received a petition dated March 2, 2005, from Appalachian Center for the Economy & the Environment on behalf of Ohio Valley Environmental Coalition and West Virginia Highlands Conservancy. The petition asks that EPA review and revise the West Virginia mercury water quality criteria for the protection of human health and aquatic life under its discretionary CWA section 303(c)(4)(B) authority and asserts that EPA is legally bound to determine that a "revised or new water quality standard is necessary to meet the requirements" of the Clean Water Act (CWA) under CWA section 303(c)(4)(B). After a careful consideration of petitioners' request and supporting information, EPA has concluded that the petitioners have not demonstrated that West Virginia's water quality criteria are inconsistent with the CWA or that EPA's promulgation of new or revised criteria for West Virginia is the only way to achieve consistency with the CWA. Accordingly, EPA is not exercising its discretion under CWA section 303(c)(4)(B) to make a determination that a revised or new water quality standard is necessary for West Virginia and hereby denies the petition.

Petition for Rulemaking

The petition requests EPA to revise West Virginia's water quality criteria for mercury and methylmercury. Specifically, the petition describes a number of health issues relating to mercury and asserts that two aspects of the West Virginia water quality criteria, currently set out in the West Virginia Code of State Rules at § 47-2 Appendix E, are less stringent than EPA's guidance:

1) West Virginia's current methylmercury fish tissue criterion of 0.5 μg/g intended to protect human health is less stringent than EPA's recommended CWA section 304(a) criterion of 0.3 mg/kg (equivalent to 0.3 μg/g);

2) West Virginia's current mercury criteria for human and aquatic health are less stringent than guidance issued by EPA and criteria promulgated by EPA for the California Toxics Rule.

The petition further asserts that the Administrator is legally bound to determine that revised or new water quality standards are necessary to meet the requirements of the CWA under CWA section 303(c)(4)(B). The petition states that the Administrator must promulgate a revised methylmercury fish tissue criterion and other mercury criteria for West Virginia.

Statutory and Regulatory Background

The CWA establishes a comprehensive program "to restore and maintain the chemical, physical, and biological integrity of the nation's waters." CWA section 101(a). The interim goal of the CWA is to attain water quality that provides for the protection and propagation of fish, shellfish, and wildlife. CWA section 101(a)(2).

Water Quality Standards

CWA section 303 requires states to adopt (subject to federal approval) water quality standards to protect the nation's waters. The principal components of states' water quality standards are: (a) designated uses for waters, such as water supply, recreation, fish propagation, agriculture, and navigation; (b) water quality criteria, which define the amounts of pollutants the waters may contain without impairing their designated uses; and (c) antidegradation requirements, which protect existing uses and otherwise limit degradation of waters. CWA sections 303(c)(2)(A) and 303(c)(2)(B), and 40 C.F.R. §§ 131.3(b), 131.3(f), 131.3(i), 131.6, 131.10-.11 (uses and criteria); and 40 C.F.R. § 131.12 (antidegradation).

Recommended Water Quality Criteria Guidance

CWA section 304(a)(1) provides that EPA shall develop (and from time to time thereafter, revise) water quality criteria based on the latest scientific knowledge regarding the relationship between pollutant concentrations and environmental and human health effects. EPA's recommended CWA section 304(a) criteria are not legally binding regulations but serve as guidance for states to use in deriving criteria to protect states' adopted designated uses.

Ultimately, water quality criteria promulgated by a state or EPA provide a basis for controlling discharges or releases of pollutants into our nation's waters. In establishing criteria, EPA's regulations provide that states may adopt water quality criteria to protect designated uses by adopting EPA's recommended CWA section 304(a) criteria, EPA's recommended CWA section 304(a) criteria to reflect site-specific conditions, or deriving and adopting criteria based on other scientifically defensible methods. In addition, states may establish narrative criteria where numeric criteria cannot be established or to supplement numeric criteria. 40 C.F.R. § 131.11.

EPA's Authority and Role

EPA review and approval of water quality standards submitted by a state

The structure of the Water Quality Standards program reflects Congress' intent to "recognize, preserve, and protect the primary responsibilities and rights of states to

prevent, reduce, and eliminate pollution [and] to plan the development and use (including restoration, preservation and enhancement) of ... water resources[.]" CWA section 101(b). Accordingly, the CWA confers to the states primary authority for setting water quality standards. EPA's role is largely one of oversight, in which it reviews states' new or revised water quality standards as they are adopted by the states and submitted to EPA. CWA section 303(c).

CWA section 303(c) provides that whenever a state adopts new or revised water quality standards, the state must submit such water quality standards to EPA for review and approval or disapproval. EPA reviews and approves or disapproves the water quality standards based on whether the water quality standards meet the requirements of the CWA and federal regulations as discussed above.

If EPA determines that a new or revised water quality standard submitted for its review is consistent with the CWA's requirements, the water quality standards "shall thereafter be the water quality standard for the applicable waters" of the state. If EPA determines that a new or revised water quality standard is inconsistent with the CWA's requirements, EPA is to notify the state of the relevant shortcomings (i.e., EPA will "disapprove" the state's new or revised water quality standard) and specify the changes needed to meet the CWA's requirements. The state then has ninety days to adopt the changes specified. CWA section 303(c)(3). If the state does not adopt such changes, EPA is then required to promulgate a federal water quality standard. In doing so, EPA shall "promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the waters involved" and promulgate new or revised standards ninety days from the date of proposal if the state still has not adopted water quality standards in accordance with the CWA. CWA section 303(c)(4).

EPA's discretionary authority

In addition to EPA's authority to review and approve new and revised water quality standards submitted by a state, EPA also has a separate, discretionary authority to promulgate federal water quality standards for a state if the Administrator determines that new or revised water quality standards are necessary to meet the requirements of the CWA. CWA section 303(c)(4)(B), 40 C.F.R. §§ 131.5(b), 131.22(b).

EPA must exercise its discretionary authority under CWA section 303(c)(4)(B) only when the Administrator has determined that the existing state water quality standards are insufficient to meet the requirements of the CWA and that an EPA-promulgated revised or new water quality standard is necessary to meet statutory requirements. In effect, this means that even if EPA has some initial evidence regarding the potential insufficiency of a state's water quality standards, section 303(c)(4)(B) does not mandate that EPA exercise its discretionary authority to promulgate a revised or new water quality standard, particularly where the information does not appear to be compelling. Absent a presentation by petitioner of evidence of deficiencies that render a state's current water quality standards inadequate under the CWA and evidence demonstrating that federal promulgation of new or revised water quality standards is

necessary to comply with the CWA, EPA's decision not to exercise its authority under CWA section 303(c)(4)(B) should not be considered arbitrary or capricious. In evaluating whether to make a determination under section 303(c)(4)(B), whether and how to consider additional information is a matter of EPA discretion. The statute does not specify any particular information or factors that EPA must consider when deciding whether to exercise discretion under section 303(c)(4)(B).[1]

EPA's Approach to Evaluating the Petition and Assessing Whether to Exercise Discretion under CWA section 303(c)(4)(B)

The petitioners request that the EPA Administrator exercise his discretionary authority under CWA section 303(c)(4)(B) to correct the alleged deficiencies in the West Virginia water quality criteria identified in the petition. In deciding whether to exercise its discretion to make a determination that a revised or new water quality standard is necessary for West Virginia, EPA examined information presented by petitioners and evaluated whether that information demonstrates that relevant requirements of the CWA and EPA regulations are not being met. EPA also evaluated policy and resource considerations relevant to the question of whether an exercise of agency discretion under CWA section 303(c)(4)(B) is appropriate in this case.

More specifically, in evaluating petitioners' request for EPA to revise West Virginia's water quality criteria, EPA considered the following:

Issue 1. Does the information presented by petitioners demonstrate that;

a. West Virginia's mercury water quality criteria and methylmercury fish tissue water quality criteria for protection of human health and mercury water quality criteria for protection of aquatic life are inconsistent with the CWA? In particular, do the differences between West Virginia's existing methylmercury fish tissue criterion and mercury criteria for human and aquatic health and EPA's corresponding guidance and criteria indicate that the West Virginia water quality criteria are inconsistent with the CWA?

b. There are deficiencies in West Virginia's water quality criteria that could only be addressed by EPA's promulgation of a revised methylmercury fish tissue criterion and mercury criteria for human and aquatic health for West Virginia?

Issue 2. Taking into account available information regarding West Virginia's water quality criteria, EPA priorities and activities relating to mercury, and policy, resource, and technical concerns, would a more detailed examination and

[1] See Environmental Defense Fund v. Costle, 657 F.2d 275, 293 (D.C. Cir. 1981) (EPA's failure to promulgate new or revised standards under CWA section 303(c)(4)(B) was not improper where evidence on alleged deficiencies presented by plaintiff did not render standards inadequate and did not include any evidence which would require promulgation of revised or new standards). See also Citizens for a Better Environment v. EPA, 1990 U.S. Dist. LEXIS 18450 (N.D. Cal. 1990) (In absence of evidence that EPA abused its discretion in not making a determination under section 303(c)(4)(B), court would not find that EPA had nondiscretionary duty to make a determination).

evaluation of West Virginia's methylmercury fish tissue criterion and mercury criteria for human and aquatic health represent the most appropriate way for EPA to address concerns raised by petitioner with regard to mercury pollution in West Virginia?

EPA's Response to Issues Identified by the Petitioners

West Virginia has adopted criteria to protect designated uses from mercury and methylmercury. W. Va. Code of State Rules at § 47-2 Appendix E. These criteria are:

Acute Aquatic Life	**Chronic Aquatic Life**	**Human Health Recreational Use**	**Human Health Public Water Supply Use**
2.4 µg/L (total Hg)	0.012 µg/L (MeHg)	0.5 µg/g (MeHg) (fish tissue) and 0.15 µg/L (total Hg) (water column)	0.5 µg/g (MeHg) (fish tissue) and 0.14 µg/L (total Hg) (water column)

EPA approved these criteria on November 9, 1995.

Issue 1

The specific deficiency alleged by petitioners is that West Virginia's water quality criteria differ from corresponding EPA guidance. Petitioners have not provided any specific evidence or reasoning as to why that difference in itself would render West Virginia's water quality criteria inconsistent with the CWA and implementing federal regulations or that EPA's promulgation of new or revised water quality criteria for West Virginia would be the only way to achieve consistency with the CWA.

West Virginia's mercury and methylmercury criteria for the protection of human health

EPA acknowledges that West Virginia's human health criterion for methylmercury in fish tissue, approved by EPA in 1995, differs from EPA's 2001 recommended criterion for methylmercury in fish tissue. However, this factor alone does not demonstrate that West Virginia's criterion is not consistent with the CWA.

As noted above, West Virginia has had an EPA-approved fish tissue criterion for methylmercury of 0.5 µg/g for the protection of human health since November 1995. In January 2001, EPA published a recommended fish tissue criterion for methylmercury of 0.3 mg/kg of wet weight fish tissue. This criterion is recommended for the protection of people who eat fish and shellfish.[2] EPA recognizes that its current recommendation of a

[2] Water Quality Criterion for the Protection of Human Health: Methylmercury, EPA-823-R-01-001, January 2001. http://www.epa.gov/waterscience/criteria/methylmercury/document.html.

criterion expressed as a fish tissue concentration rather than a water column-based concentration raises new implementation issues. Therefore, EPA is now in the process of developing final guidance to assist states in developing and implementing a methylmercury fish tissue criterion.

Importantly, states are not required to adopt EPA's recommended water quality criteria, and there is no presumption that a state's failure to adopt EPA's criteria recommendation means that the state's criteria are not in compliance with the CWA and implementing federal regulations. Neither the CWA nor the federal regulations compel states to adopt EPA's recommended water quality criteria. EPA's regulations provide that states may adopt EPA's recommended CWA section 304(a) criteria, modify EPA's recommended CWA section 304(a) criteria to reflect site-specific conditions, or derive and adopt criteria based on other scientifically defensible methods (see 40 C.F.R. § 131.11(b)). Therefore, differing water quality standards do not necessarily indicate that the water quality standards are inconsistent with the CWA and implementing federal regulations.

States can use EPA's recommended water quality criteria, including the methylmercury criterion, as guidance in adopting water quality standards consistent with CWA section 303(c) and EPA's implementing regulations at 40 C.F.R. Part 131.[3] At the same time, consistent with EPA regulations at 40 C.F.R. § 131.11(b), the Agency also encourages states to adopt criteria that reflect local and regional conditions if they believe that such a water quality criterion would be more appropriate for their target population.[4] For example, states may wish to consider calculating their own fish tissue criteria or adopting site-specific criteria for methylmercury to reflect local or regional fish consumption rates or relative contributions of mercury from various sources. Such a criterion could be more or less stringent numerically than EPA's recommendation, depending on the particular circumstances.

EPA also recognizes that when states develop new or revised water quality criteria for methylmercury, they need not adopt a methylmercury criterion expressed as a fish tissue concentration. Instead, they may choose to translate EPA's criterion to a water column number or adopt other scientifically defensible criteria that protect the designated use. In addition, states may, but are not required to, adopt water quality criteria consisting of both a fish tissue concentration and a water column number.

In terms of the timing of a state's adoption of new or revised water quality criteria, EPA has stated that the Agency generally believes that five years from the date of EPA's publication of new or revised water quality criteria is a reasonable time by which states should consider the recommendations in the water quality criteria document

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[3] See Notice of Availability of Water Quality Criterion for the Protection of Human Health: Methylmercury, 66 Fed. Reg. 1344 (Jan. 8, 2001). The Notice states that EPA uses the CWA section 304(a) recommended water quality criteria as guidance to states and authorized Tribes in adopting water quality standards and as guidance to EPA in promulgating Federal water quality standards.

[4] Water Quality Criterion for the Protection of Human Health: Methylmercury, EPA-823-R-01-001, January 2001, at p.7-2. http://www.epa.gov/waterscience/criteria/methylmercury/document.html.

when evaluating whether to adopt new or revised water quality criteria necessary to protect the designated uses of their waters.[5] However, this time frame is not mandatory for any recommended criteria, including EPA's recommended methylmercury fish tissue criterion. Thus, there is no presumption that EPA must promulgate new or revised water quality criteria for a state if the state does not adopt new or revised water quality criteria within five years. Further, EPA understands the complexity of implementing a fish tissue criterion and has recognized that states may wait to consider adopting a methylmercury fish tissue criterion until the completion of EPA's mercury criteria implementation guidance.[6]

Petitioners also maintain that West Virginia's mercury criteria for human health (0.5 μg/g (MeHg) (fish tissue) and 0.14 μg/L (total Hg) (water column)) are less stringent than the human health criterion in EPA's California Toxics Rule (CTR) (0.05 μg/L (total Hg) (water column)). The CTR was based on EPA's determination that numeric criteria were necessary in the State of California because the state lacked numeric water quality criteria that were required by the CWA.[7] As stated previously, states are not required to adopt the same criteria as that recommended by EPA or, in fact, those promulgated by EPA for other states. Neither are they required to adopt the same water quality criteria that other states adopt. Therefore, the existence of differences between West Virginia's water quality criteria for human health and those promulgated for another state does not in itself provide a basis to conclude that West Virginia's criteria are not consistent with the CWA.

Accordingly, EPA does not believe that West Virginia's methylmercury fish tissue criterion should be presumed to be inconsistent with the CWA solely because West Virginia's fish tissue criterion is numerically higher than EPA's recommended value. Additionally, the petitioners have not demonstrated that the West Virginia water quality criteria for human health (consisting of a fish tissue criterion and a water column criterion) are scientifically indefensible or otherwise not protective.

West Virginia's mercury criteria for the protection of aquatic life

EPA acknowledges that West Virginia's aquatic life criteria for mercury (2.4 μg/L (total Hg) for acute aquatic life and 0.012 μg/L (MeHg) for chronic aquatic life) differ from EPA's recommended criteria (1.4 μg/L (dissolved Hg) and 0.77 μg/L (dissolved Hg), respectively). However, EPA does not believe that this difference alone demonstrates that West Virginia's criteria are not consistent with the CWA, or that EPA should make a determination that new or revised water quality standards promulgated by EPA are necessary to protect aquatic life use in West Virginia.

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[5] Notice of Availability of Water Quality Criterion for the Protection of Human Health: Methylmercury, 66 Fed. Reg. 1344, 1357 (Jan. 8, 2001).

[6] Notice of Availability of Water Quality Criterion for the Protection of Human Health: Methylmercury, 66 Fed. Reg. 1344, 1346 (Jan. 8, 2001).

[7] Final Rule, Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California, 65 Fed. Reg. 31682, 31685-86 (May 18, 2000).

EPA published a compilation of its current recommended water quality criteria for the protection of aquatic life on December 7, 1998.[8] In its Federal Register notice, EPA recommended that states use these water quality criteria as guidance in adopting water quality standards. Although CWA section 303(c)(2)(A) requires that the states and authorized tribes adopt water quality criteria that protect designated uses, states are not required to adopt EPA's recommended water quality criteria, as discussed above. This means that states' aquatic life criteria may differ from EPA's recommended values without being inconsistent with the CWA.

Moreover, water quality criteria, such as these mercury aquatic life criteria, protect the designated use through discharge permit limits to control discharges of the pollutant. The National Pollutant Discharge Elimination System (NPDES) permit-issuing authority (West Virginia in this case) develops water quality-based effluent limits (WQBELs) to prevent exceedances of the criteria in the receiving water. Where both acute and chronic criteria apply, such as in the case of a permit that must contain WQBELs derived from West Virginia's criteria for protection of aquatic life, that WQBEL must be based on the criterion that results in the most stringent effluent limits.[9] Although West Virginia's 2.4 µg/L (total Hg) acute aquatic life criterion differs somewhat from EPA's recommended acute criterion of 1.4 µg/L (dissolved Hg), West Virginia's 0.012 µg/L (MeHg) chronic aquatic life criterion is over 50 times more stringent than EPA's recommended chronic criterion of 0.77 µg/L (dissolved Hg). Because WQBELs are based on the most limiting applicable criterion, permits in West Virginia that require WQBELs for mercury in order to protect aquatic life use are subject to a criterion for mercury more stringent than that recommended by EPA. In this light, it does not appear that the differences between West Virginia's criteria and EPA's criteria recommendations indicate that West Virginia's criteria are not adequate.

Petitioners also broadly assert that West Virginia's criteria are less stringent than criteria promulgated by EPA for the California Toxics Rule. However, this assertion is not relevant to an assessment of West Virginia's mercury criteria for the protection of aquatic life since the CTR did not promulgate any aquatic life criteria for mercury. [10]

Accordingly, EPA does not presume that West Virginia's mercury water quality criteria for aquatic life are not protective solely because they differ from EPA's recommended values. Petitioners have not provided any other information showing that West Virginia's aquatic life criteria for mercury do not achieve requirements of the CWA and implementing federal regulations, and have not shown that promulgation of new or revised criteria by EPA would be the only way to meet the requirements of the CWA.

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[8] Compilation of National Recommended Water Quality Criteria, 63 Fed. Reg. 67548 (Dec. 7, 1998).

[9] See Technical Support Document for Water Quality-based Toxics Control, EPA/505/2-90-001, March 1991, at p.48 ([T]o prevent impacts to aquatic life or human health, the [receiving water concentration] of the parameter effluent toxicity...must be less that the most limiting applicable criterion."); id at p. 99-101 ("A treatment system will only need to be designed to meet one level of treatment for effluent toxicity—treatment needed to control the most limiting toxic effect."). http://www.epa.gov/npdes/pubs/owm0264.pdf

[10] Final Rule, Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California, 65 Fed. Reg. 31682 (May 18, 2000); 40 C.F.R. § 131.73(b)(1).

Issue 2

The petitioner is requesting that EPA use resources to promulgate new mercury criteria for West Virginia. EPA took into account several factors in evaluating whether it was appropriate to expend time and resources on the further research and evaluation that would be necessary to fully assess West Virginia's mercury and methylmercury water quality criteria. In addition to the information in the petition, EPA reviewed other available sources relating to West Virginia's mercury program and water quality standards. In EPA's view, the information reviewed does not indicate it would be a wise investment of limited Agency resources to place a priority on further evaluating West Virginia's water quality criteria.

EPA is facing a number of competing priorities within the water quality standards program. There currently are 37 states that do not have fish tissue-based criteria for methylmercury. Under section 304(a)(1) of the CWA, EPA develops recommended criteria for water quality that accurately reflect the latest scientific knowledge. Methylmercury is the form of mercury that presents the greatest risks to human health. Therefore, a major priority for the water quality standards program is to assist the many states and authorized tribes that lack fish tissue criteria and wish to develop methylmercury water quality criteria based on the recommendations in EPA's 2001 methylmercury criteria document. Significant ongoing EPA activities in support of this goal include finalizing its guidance for implementing EPA's January 2001 methylmercury water quality criterion and working with the states that currently do not have fish tissue-based criteria for methylmercury. Once this guidance is issued, EPA intends to assist states to adopt into their water quality standards the recommendations in the 2001 methylmercury criteria document or other water quality criteria for methylmercury using scientifically defensible approaches.

Rather than directing resources towards evaluating the water quality criteria of a single state that is in fact ahead of other states in having moved to a fish tissue-based criterion, EPA believes that it is important to focus on taking action on a nationwide basis to assist states and authorized tribes in developing their methylmercury water quality criteria. Most importantly, many of the same staff and the resources that would be used to take further actions regarding West Virginia's water quality criteria are now devoted to finalizing the methylmercury implementation guidance. Among other things, this document describes methods for measuring mercury and methylmercury in both tissue and water and provides guidance for field sampling plans, laboratory analysis protocols, and data interpretation. It also provides guidance on water quality standards, total maximum daily loads (TMDLs), and NPDES permitting issues relating to mercury. EPA believes the methylmercury implementation guidance will greatly assist all states and authorized tribes in implementing their methylmercury water quality criteria. EPA believes finalizing and implementing this guidance should have a greater priority for the national water quality standards program than the further evaluation of West Virginia's mercury and methylmercury water quality criteria.

Moreover, EPA is conducting numerous significant Agency-wide actions targeting reductions in mercury that EPA believes should have priority over actions to further evaluate West Virginia's water quality criteria. Currently, there are a wide variety of initiatives underway in EPA to address mercury contamination. EPA's mercury website http://www.epa.gov/mercury, offers examples of EPA's projects and provides information on mercury's effects on people and the environment.

On July 5, 2006, EPA issued a report titled *EPA's Roadmap for Mercury*. EPA's Roadmap describes the Agency's progress to date in addressing mercury issues domestically and internationally and outlines EPA's major ongoing and planned actions to address risks associated with mercury. The Roadmap describes the Agency's most important actions to reduce both mercury releases and human exposure to mercury. Creating the Roadmap has enabled the Agency to maximize coordination of its many diverse efforts, with the goal of improving EPA's mercury program.

Another EPA initiative is to reduce the amount of mercury in air emissions. In 2005, EPA published the Clean Air Mercury rule to permanently cap and reduce mercury emissions from coal-fired power plants for the first time ever. EPA has focused most of its mercury reduction efforts in the last 15 years on large point sources of air emissions such as municipal waste combustors, medical waste incinerators, and hazardous waste combustors. With the May 2005 completion of EPA final regulations for coal-fired power plants, the Agency now has air standards in place limiting mercury air releases from most major known industrial sources in the U.S.

EPA expects these activities will ultimately result in significant decreases of mercury into the environment and will have a positive effect on mercury concentrations in water and fish tissue. EPA estimates that, nationally, the vast majority of mercury in water and fish tissue originates from air emissions.

As evidenced by EPA's mercury website and the initiatives described above, EPA is investing a significant amount of resources to reduce the exposure and risks of mercury. EPA believes that focusing on these national efforts represents the wisest and most efficient use of the Agency's resources and is an effective way of promoting EPA's mercury reduction programs and policies.

Conclusion

In light of all of the above considerations, EPA has concluded that the petitioners have not demonstrated that West Virginia's water quality criteria are inconsistent with the CWA or that EPA's promulgation of new or revised criteria for West Virginia is the only manner in which consistency with the CWA may be attained. Accordingly, EPA is not exercising its discretion under CWA section 303(c)(4)(B) to make a determination that a revised or new water quality standard is necessary for West Virginia and hereby denies your petition.